



U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2012-0015]

Proposed Modification of the Uniform Chimney Variance to Include Industrial Access, Inc., and Marietta Silos LLC

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of applications for a permanent variance and request for comments.

SUMMARY: OSHA proposes to modify the uniform chimney variance granted to Kiewit Power Constructors Co. and other employers (see 78 FR 60900) by adding Industrial Access, Inc., and Marietta Silos LLC (“Industrial Access and Marietta Silos” or “the applicants”) to the list of employers covered by the conditions specified in that variance. OSHA invites the public to submit comments on this proposed modification.

DATES: Submit comments, information, and documents in response to this notice, or requests for a hearing or an extension of time to make a submission, on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments and requests by any of the following methods:

Electronically: Submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Facsimile: If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693-1648. Instead of transmitting facsimile copies of attachments that supplement the comments (e.g., studies, journal articles), commenters may submit these attachments to the OSHA Docket Office,

Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (i.e., OSHA-2012-0015) so that the Agency can attach them to the appropriate comments.

Regular or express mail, hand delivery, or messenger (courier) service: Submit a copy of comments and any attachments to the OSHA Docket Office, Docket No. OSHA-2012-0015, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-2625, Washington, DC 20210; telephone: (202) 693-2350 (TDY number: (877) 889-5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. - 4:45 p.m., e.t.

Instructions: All faxed and written submissions must include the Agency name and the OSHA docket number (OSHA-2012-0015). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers and birth dates.

Docket: To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index; however,

some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office at the address or telephone number listed above for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3647, Washington, DC 20210; telephone: (202) 693-1999; email: Meilinger.francis2@dol.gov.

General and technical information: Contact Mr. David Johnson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3655, Washington, DC 20210; telephone: (202) 693-2110; email: johnson.david.w@dol.gov. OSHA's web page includes information about the Variance Program (see <http://www.osha.gov/dts/otpc/variances/index.html>).

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice. Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This Federal Register notice, as well as news releases and other relevant information, also are available at OSHA's webpage at <http://www.osha.gov>.

Hearing requests. OSHA is issuing this notice pursuant to 29 CFR 1905.13 (“Modification, revocation, and renewal of rules or orders”). Paragraph (a)(2) of that provision states that requests for a hearing must explain (1) how the proposed modification would affect the requesting party, and (2) what the requesting party is seeking to show regarding the subjects or issues involved.

I. Background

Between 1973 and 2010, OSHA granted to a number of chimney-construction companies permanent variances from the provisions of the OSHA standards that regulate boatswains’ chairs and hoist towers, specifically, paragraph (o)(3) of 29 CFR 1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.¹ On October 2, 2013, the Agency granted a permanent multi-state uniform chimney variance to 15 construction employers (Kiewit et al; 78 FR 60900). The uniform chimney variance: (1) clarified, improved, and updated the technology and safeguards included in the conditions of the variance by citing the most recent consensus standards and best practices; (2) broadened and standardized the scope of the uniform chimney variance to apply to chimney-related construction, including work on chimneys, chimney linings, stacks, silos, towers, and similar structures, built using jump-form and slip-form methods of construction, regardless of the structural configuration, and that involve the use of temporary personnel hoist systems; (3) provided consistent and safe variance conditions across the employers applying for, and granted, the uniform chimney

¹See 38 FR 8545 (April 3, 1973), 44 FR 51352 (August 31, 1979), 50 FR 20145 (May 14, 1985), 50 FR 40627 (October 4, 1985), 52 FR 22552 (June 12, 1987), 68 FR 52961 (September 8, 2003), 70 FR 72659 (December 6, 2005), 71 FR 10557 (March 1, 2006), 72 FR 6002 (February 8, 2007), 74 FR 34789 (July 17, 2009), 74 FR 41742 (August 18, 2009), and 75 FR 22424 (April 28, 2010).

variance; and (4) superseded and replaced the chimney-related construction variances granted between 1973 and 2010.

II. Notice of Applications

On December 6, 2013, Industrial Access, Inc., and on February 7, 2014, Marietta Silos LLC, submitted their respective applications for a permanent variance under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and 29 CFR 1905.11 (“Variances and other relief under section 6(d)”) (see Exs. OSHA-2012-0015-0023 and 0024). The applicants construct, renovate, repair, maintain, inspect, and demolish tall chimneys and similar structures made of concrete, brick, and steel. This work, which occurs throughout the United States, requires the applicants to transport employees and construction tools and materials to and from elevated worksites located inside and outside these structures. The applicants’ names and addresses are as follows:

Industrial Access, Inc.
1155 McFarland 400 Drive
Alpharetta, GA 30004

Marietta Silos LLC
2417 Waterford Road
Marietta, OH 45750

The applicants seek a permanent variance from 29 CFR 1926.452(o)(3), which regulates the tackle used to rig a boatswains’ chair, as well as from paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552, which regulate hoist towers. These paragraphs specify the following requirements:

- (o)(3) – Requirements for the tackle used to rig a boatswains’ chair;
- (c)(1) – Construction requirements for hoist towers outside a structure;
- (c)(2) – Construction requirements for hoist towers inside a structure;

- (c)(3) – Anchoring a hoist tower to a structure;
- (c)(4) – Hoistway doors or gates;
- (c)(8) – Electrically interlocking entrance doors or gates to the hoistway and cars;
- (c)(13) – Emergency stop switch located in the car;
- (c)(14)(i) – Using a minimum of two wire ropes for drum hoisting; and
- (c)(16) – Material and component requirements for construction of personnel hoists.

Instead of complying with these requirements, the applicants propose to use the alternative conditions specified by OSHA for these requirements in the uniform chimney variance. The applicants contend that including them under the conditions of the uniform chimney variance would provide their employees with a place of employment that is at least as safe and healthful as these employees would receive under the existing provisions.

As is the case with the uniform chimney variance, the places of employment affected by the variance applications are the present and future projects where the applicants construct chimneys and chimney-related structures using jump-form and slip-form construction² techniques and procedures, regardless of structural configuration when such construction involves the use of temporary personnel hoist systems. The applicants' projects would be in states under federal authority, as well as states that have safety and health plans approved by OSHA under Section 18 of the Occupational Safety and Health

²Throughout this notice, OSHA uses the terms “jump-form construction” and “slip-form construction” instead of “jump-form formwork construction” and “slip-form formwork construction,” respectively.

Act of 1970 (29 U.S.C. 667) and 29 CFR part 1952 ("Approved State Plans for Enforcement of State Standards"). The affected states cover private-sector employers and have standards identical to the standards that are the subject of these applications, and these states agree to the terms of the variance. (For further information, see the discussion of State-plan coverage for the uniform chimney variance at 78 FR 60900, 60901.)

The proposed variance would permit the applicants to operate temporary hoist systems in the manner prescribed by the uniform chimney variance. According the conditions of the uniform chimney variance, the applicants would use these temporary hoist systems to raise and lower workers to and from elevated worksites. Examples of elevated worksites where temporary hoist systems would operate include: chimneys, chimney linings, stacks, silos, and chimney-related structures such as towers and similar structures constructed using jump-form and slip-form construction techniques and procedures regardless of the structural configuration of the structure (such as tapered or straight barreled of any diameter).

The applicants certify that they provided the employee representatives of the affected employees³ with a copy of their respective variance applications. The applicants also certify that they notified their employees of the respective variance applications by posting a copy of the respective applications at locations where they normally post notices to their employees, and by other appropriate means. In addition, the applicants attest that they informed their employees and their representatives of their right to

³“Affected employees” are employees affected by the permanent variance should OSHA grant it.

petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on their variance applications.

If granted, OSHA would add the applicants to the employers listed in the uniform chimney variance. Therefore, the applicants would comply with conditions that are consistent with the conditions used by the other employers listed in the uniform chimney variance when operating temporary hoist systems in the construction of chimney-related structures.

III. Specific Conditions of the Variance Applications

As mentioned previously in this notice, OSHA has granted a number of permanent variances since 1973 from the tackle requirements for boatswains' chairs in 29 CFR 1926.452(o)(3) and the requirements for hoist towers specified by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552. In view of the OSHA's history, knowledge, and experience with the variances granted for chimney-related construction, OSHA finds that the variance applications submitted by Industrial Access and Marietta Silos are consistent with the uniform chimney variance previously granted to other employers in the construction industry. Therefore, OSHA preliminarily determined that the alternative conditions specified by the applications will protect the applicants' workers at least as effectively as the requirements of 29 CFR 1926.452(o)(3) and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 29 CFR 1926.552.

Pursuant to the provisions of 29 CFR 1905.13 ("Modification, revocation, and renewal of rules or orders"), OSHA is notifying the public that Industrial Access and Marietta Silo are proposing to modify the uniform chimney variance granted previously

by OSHA to Kiewit Power Constructors Co. and other employers (see 78 FR 60900) by adding them to the list of employers granted authority by the Agency to apply the conditions specified in the uniform chimney variance when operating temporary hoist systems in the construction of chimney-related structures. Accordingly, section VI (“Order”) of the uniform chimney variance provides the alternate conditions to which Industrial Access and Marietta Silos would have to comply should OSHA grant them this modification to the uniform chimney variance. OSHA invites the public to submit comments on this proposed modification to the uniform chimney variance.

IV. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 655, Secretary of Labor’s Order No. 1-2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR part 1905.

Signed at Washington, DC, on April 15, 2014.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

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